

**JOINT RESOLUTION - CHALLENGING THE
LEGALITY OF A CONVICTION OR
SENTENCE**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This joint resolution of the Legislature proposes to amend the Utah Constitution to enact a provision relating to challenges to the legality of a conviction or sentence.

Highlighted Provisions:

This resolution proposes to amend the Utah Constitution to:

- ▶ provide that, following a direct appeal, a person may challenge the legality of the conviction or sentence only as provided by statute; and
- ▶ provide that a person may not be barred from obtaining relief from a conviction or sentence under certain circumstances.

Special Clauses:

This resolution directs the lieutenant governor to submit this proposal to voters.

This resolution provides a contingent effective date of January 1, 2011 for this proposal.

Utah Constitution Sections Affected:

ENACTS:

ARTICLE I, SECTION 30

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:



Section 1. It is proposed to enact Utah Constitution Article I, Section 30, to read:

Article I, Section 30. [Challenging the legality of a conviction or sentence.]

(1) After a person's conviction and sentence have been affirmed in a direct appeal under Article I, Section 12, or the time to file a direct appeal has expired, and notwithstanding any other provision of this Constitution, the person may challenge the legality of the conviction or sentence only in the manner and to the extent provided by statute, subject to Subsection (2).

(2) A person may not be barred from obtaining relief from a conviction or sentence if:

(a) the person can prove by clear and convincing evidence that the person did not:

(i) engage in the conduct for which the person was convicted;

(ii) engage in conduct relating to a lesser included offense; and

(iii) commit any other felony arising out of or reasonably connected to the facts supporting the indictment or information upon which the person was convicted; or

(b) in the case of a person sentenced to death, the person can prove with newly discovered evidence that the person lacked the mental state necessary for conviction of a capital offense.

Section 2. Submittal to voters.

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

Section 3. Effective date.

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2011.

Legislative Review Note

as of 2-4-09 12:19 PM

Office of Legislative Research and General Counsel